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SI  
(99)

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3 San Jose, CA 95113  
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ADR

FILED

2008 FEB 11 A 9:50

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIF.

Pro Se

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

7 Xi Chen

Plaintiff,

Case No.

8 vs.

9 *Michael Chertoff*, Secretary of the  
10 Department of Homeland Security;  
11 *Emilio T. Gonzalez*, Director U.S.  
12 Citizenship and Immigration Services;  
13 *Francis D. Siciliano*, Officer-in-Charge, San  
14 Jose Sub Office, U.S. Citizenship and  
15 Immigration Services;  
16 *Robert S. Mueller, III*, Director of the  
17 Federal Bureau of Investigation  
18 Defendants.

C08 00883 PVT

Petition For Hearing On Naturalization  
Application Under 8 U.S.C. §1447(b)

17 COME NOW Xi Chen , Plaintiff in the above-styled and numbered cause, and for cause of  
18 action would show unto the Court the following:

- 19
- 20 1. This action is brought for a hearing to decide Plaintiff's naturalization application
- 21 before this Court pursuant to the Immigration and Nationality Act ("INA") §336(b), 8
- 22 U.S.C. § 1447(b) due to Defendants' failure to make a determination on Plaintiff's
- 23 application for naturalization within 120 days after the initial examination.
- 24

25 PARTIES

- 26 2. Plaintiff Xi Chen (Alien Registration Number A47604237) is a citizen of China and a
- 27 permanent resident of the United States since December 11<sup>th</sup> 2000. She resides in San
- 28

1 Jose, CA. Plaintiff applied for naturalization to the United States and was interviewed  
2 for her naturalization application on February 10<sup>th</sup>, 2006. Defendants have failed to  
3 make a decision on the application within the 120 days after the examination.  
4

5 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security

6 (DHS), and this action is brought against him in his official capacity. He is generally  
7 charged with the enforcement of the Immigration and Nationality Act, and is further  
8 authorized to delegate such powers and authority to subordinate employees of the  
9 DHS. 8 U.S.C. §1103(a); 8 C.F.R. §2.1.  
10

11 4. Defendant Emilio T. Gonzalez is the Director of the United States Citizenship and  
12 Immigration Services (USCIS), an agency within the DHS to which the Secretary's  
13 authority has in part been delegated and is subject to the Secretary's supervision.  
14

15 Defendant Director is generally charged with the overall administration of  
16 immigration benefits and immigration services. 8 C.F.R. §100.2(a).  
17

18 5. Defendant Francis D. Siciliano, Officer-in-Charge, San Jose Sub Office, United States  
19 Citizenship and Immigration Services (USCIS), is an official of the USCIS generally  
20 charged with supervisory authority over all operations of the USCIS within his  
21 District with certain specific exceptions not relevant here. 8 C.F.R. §100.2(d)(2)(ii).  
22

23 As will be shown, Defendant Director is the official with whom Plaintiff's  
24 naturalization application remains pending.  
25

26 6. Defendant Robert S. Mueller, III, is the Director of the Federal Bureau of  
27 Investigation (FBI), the law enforcement agency that conducts security clearances for  
28

1 other U.S. government agencies, such as the Department of State. As will be shown,  
2 Defendant has failed to complete the security clearance on Plaintiff's case.  
3

#### 4 JURISDICTION

5 7. Jurisdiction in the case is proper under the INA §336(b) and 8 U.S.C. §1447(b). Relief  
6 is requested pursuant to said statutes.  
7

#### 8 VENUE

9 8. Venue is proper in this court, pursuant to 8 U.S.C. §1447(b), in that the Plaintiff may  
10 request a hearing on the matter in the District in which the Plaintiff resides.  
11

#### 12 STATEMENT OF FACTS

13 9. Plaintiff filed her N-400, Application for Naturalization, with USCIS on September  
14 16th, 2005 and was examined on her application for naturalization on February 10th,  
15 2006. Plaintiff passed the English language and government/civics examination  
16 portions of the examination. At the conclusion of the examination on February 10th,  
17 2006, Plaintiff was told she could not be given a decision until the defendants had  
18 completed all necessary background checks (Exhibit 1).  
19

20  
21 10. Plaintiff's application for naturalization has now remained unadjudicated for more  
22 ~~than a year~~ <sup>two years (X.C.)</sup> from the date of interview.

23  
24 11. Plaintiff has met all the eligibility requirements for naturalization. She has met the  
25 residence, as well as physical presence requirement, is of good moral character, is  
26 attached to the Constitution of the United States, and has passed the English, history  
27 and government tests. Plaintiff has completed the FBI fingerprint; she has no criminal  
28 record. Yet, Plaintiff's application for naturalization is still pending.

12. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements.

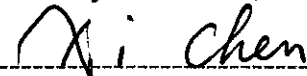
13. Defendants, in violation of INA §336(b), 8 U.S.C. §1447(b), have failed to make a determination on Plaintiff's naturalization application within the 120-day period after the date of examination.

### PRAYER

14. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order adjudicating the naturalization application. In the alternative, the Court may remand requiring Defendants to immediately adjudicate Plaintiff's naturalization application.

Dated: February 11, 2008

Respectfully submitted,



Xi Chen  
Plaintiff

### LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	N-652 dated February 10, 2006

U.S. Department of Homeland Security  
Citizenship and Immigration Services

## N-652, Naturalization Interview Results

Case Number : 001385076  
Name : CHEN X1  
Dob : 04/04/1937

A#: A47604237

On February 10, 2006, you were interviewed by USCIS Officer JOHN R. GONZALEZ

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the test of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to ☐ speak / ☐ read / ☐ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on the Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your ☐ English ability / ☐ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. USCIS will send you a written decision about your application.

A) ☐ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) ☒ *NAME CHECK PENDING-*  
A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

**NOTE:** Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.